S.B.CRIMINAL REVISION PETITION NO.328/2007
(Mukta Ram Vs. State & Ors.)

Date of order : 20.9.2007

HON'BLE MR. JUSTICE GOPAL KRISHAN VYAS

Mr. Suresh Kumbhat, for the petitioner.

Heard learned counsel for the petitioner and perused the order impugned dated 17.1.2007 passed by Judicial Magistrate (First Class), Sojat City, District Pali.

According to the facts of the case, the petitioner filed a complaint before the Court of Judicial Magistrate, First Class, Sojat City against non-petitioners No.2 to 5 for offence under Sections 406 and 420 I.P.C. wherein it was alleged that petitioner and non-petitioners No.2 to 5 are in joint possession of agricultural land situated in khasra No.165, 164 and 163, new numbers 338, 342, 343 and 339. It is further mentioned in the petition that 'mehandi' crop was in existence and it was joint property of petitioner and non-petitioners No.2 to 5. However, non-petitioners No.2 to 5 sold the said crop and share of the petitioner was not given to him, therefore, the said complaint was filed under Section 156 (3) Cr.P.C. before learned Magistrate against non-petitioners No.2 to 5 for offence under Sections 406 and 420 I.P.C. and the same was forwarded to Police

Station Sojat City for registering the case against non-petitioners No.2 to 5. After investigation, police filed final report and notice was issued to the petitioner. The petitioner filed protest petition and thereafter his statement under Sections 200 and 202 Cr.P.C. was recorded by the trial Court. It is further stated in the petition that vide impugned order dated 17.1.2007, learned Magistrate has accepted the final report submitted by Police and dismissed the protest petition.

It is argued by learned counsel for the petitioner that the order impugned is erroneous and illegal because at the time of passing impugned order, the learned Magistrate ought to have consider the statement recorded under Sections 200 and 202 Cr.P.C., which were not considered by him while passing the impugned order.

In support of his contention, learned counsel for the petitioner has relied upon the judgment rendered by Hon'ble Supreme Court in case of Ajay Mehra & Anr. Vs. Durgesh Babu & Ors., reported in 2003 SCC (Cri) 1530 in which, according to the learned counsel for the petitioner, it is verdict of Hon'ble Supreme Court that at the time of passing order, the statement recorded under Sections 200 and 202 Cr.P.C. are required to be considered by learned Magistrate. He has further cited judgment in case of Binay Kumar

Jha & Ors. Vs. State of Bihar & Anr., reported in 2002 (4) Crimes 426 and the judgment rendered by this Court in case of Mamraj & Ors. Vs. State of Rajasthan, reported in 1999 (2) RCD 661 (Raj) wherein the Coordinate Bench of this Court observed that at the time of deciding protest petition and matter of final report, the learned Magistrate is required to consider the statement recorded under Section 200 and 202 Cr.P.C.

Learned counsel for the petitioner further argued that the present case is not a case of civil nature as observed by learned Magistrate vide impugned order and in view of judgment rendered by Hon'ble Supreme Court in case of Lalmuni Devi Vs. State of Bihar & Ors., reported in 2001 AIR SCW 2504, both the criminal and civil proceedings can run together, if any offence is committed.

I have considered the arguments made by the learned counsel for the petitioner and also gone through the judgments cited by him.

There is no doubt that as per the verdict of Hon'ble Supreme Court the Magistrate is required to consider the statement recorded under Section 200 and 202 Cr.P.C. at the time of taking cognizance or deciding the protest petition. However, in the peculiar facts and circumstances of this case and

looking to the statement submitted before me by the learned counsel for the petitioner, it is obvious that it is a case of civil nature though it is not observed in the impugned order by the Magistrate that he has considered the statement recorded under Sections 200 and 202 Cr.P.C. However, it is clear from perusal of order impugned that at the time of adjudicating the matter, the Magistrate has considered the material on record including statement recorded under Sections 200 and 202 Cr.P.C. for the purpose of arriving at with the finding that the case is of civil nature though it is not specifically observed in the order that at the time of passing order the statement recorded under Section 200 and 202 Cr.P.C. were considered.

In my opinion, it is not necessary for the Magistrate to categorically observe in the order that he has considered the statement recorded under Section 200 and 202 Cr.P.C. but it must appear from the order whether the Magistrate has considered the statement recorded under Section 200 and 202 Cr.P.C. Upon perusal of order, it is clear that the Magistrate has considered these statement at the time of passing impugned order. The learned Magistrate has rightly come to the conclusion that this is a case of civil nature, therefore, the finding does not require any interference by this Court in its revisional jurisdiction.

With regard to second argument that both the criminal and civil proceedings can be initiated, it is made clear that once the finding is arrived at by learned Magistrate that the case is of civil nature then there is no question of initiating both the criminal and civil proceedings.

Accordingly, the revision petition is dismissed.

(GOPAL KRISHAN VYAS), J .

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